

June 10, 1985

The Honorable John L. Martin  
Speaker of the House of Representatives  
State House  
Augusta, Maine 04333

Dear Speaker:

You have requested my opinion as your Counsel as to whether Legislators who are owners of Union Mutual insurance policies have a conflict of interest within the meaning of the Maine Governmental Ethics Act, 1 M.R.S.A. § 1001-1021 (1979 & Supp. 1984), if they vote on L.D. 1476 AN ACT To Amend the Provisions Governing the Conversion of a Mutual Insurer.

It is important to note that the Commission on Governmental Ethics and Election Practices is specifically authorized to issue advisory opinions to legislators relating to "conflicts of interest" 1 M.R.S.A. § 1013 (1) (A). Further, the Attorney General is also authorized to issue opinions on questions of law to legislators, 5 M.R.S.A. § 195 (1979). I presume that opinions from Commission and Attorney General cannot be received in time to provide the necessary guidance. Further, I understand that you are seeking my opinion in order to make a ruling in your position as Speaker, having been requested to do so by a member of the House.

The general purposes of the legislative ethics statutes have been set out in detail in those statutes 1 M.R.S.A. § 1011 and place special emphasis on the part-time nature of legislators' duties and their obligation to represent their constituents by exercising their voting privileges.

The legislative ethics statute clearly states the general conflict of interest standard applicable to this situation.

A conflict of interest shall include the following:

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation. 1 M.R.S.A. § 1014 (1) (A).

A second provision may also apply to certain legislators..

F. Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment. 1 M.R.S.A. § 1014 (1) (F).

In order to apply these provisions, it is necessary to examine the provisions of L.D. 1476. The bill and the Committee Amendment (H-279) establish more specific provisions for the conversion of a mutual insurer into a stock insurer. In particular it establishes voting provisions for demutualization and specific standards for the Superintendent to apply in approving a demutualization plan. Of particular interest are the provisions establishing the standards to be applied for payment to members for their interest in the mutual insurer when that interest is converted into a stock interest. The bill, as amended, establishes approval standards for a demutualization plan that allows the superintendent to approve a plan that provides that the equity return to members may be in a combination of stock and cash. Thus, the basic purpose of the bill is to establish the procedures and standards for the superintendent's decision on a demutualization plan.

Most important, it must be borne in mind that this bill applies to any "demutualization," and not to a particular company or proceeding. Though the reality is that there is only one proceeding presently in progress, the bill, by its terms, is general legislation applying to any such proceeding now or in the future.

The issue presented is whether a legislator who is an "owner" of a mutual insurance policy has a "conflict of interest" in voting on this bill.

First, the provisions of 1 M.R.S.A. § 1014, subsection 1, paragraph A require that the Legislators' interest be in an "enterprise which would be financially benefited by (the) proposed legislation ..." It appears that the provisions of L.D. 1476 do not "financially benefit" the "enterprise", the mutual insurance company. All the bill does is establish procedures and standards for review and approval of a proposed action. It does not provide tax benefits or exemptions, financial assistance or relief, or exemptions from statutory limitations that could be construed to "financially benefit" the insurance company.

Secondly, it seems clear that the required "direct substantial personal financial interest" of a Legislator in a mutual insurance company also does not exist. Certainly, to the extent a Legislator's interest in a mutual insurance company is through a "group plan", it is not direct. The "owners" of a group plan are the persons in whose name the master policy is held. (See the provisions of the Committee Amendment, H-279, sec. 4, that recognize this fact.) Thus any Legislator who has a policy in a mutual company through a "group plan" could not be found to have a "direct interest".

The "indirect provision" of this paragraph, that of "close economic association" would apparently apply to a "group plan" member. However, it again appears that a "group plan" member would not derive "direct substantial personal financial benefit" from that association. The bill merely establishes procedure and standards and confers no direct financial benefit on any "group plan".

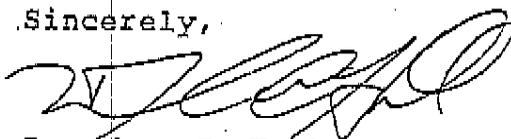
Even if a Legislator owns a mutual insurance policy individually, in most instances it would appear that that interest may not be "substantial". Though the interpretation of "substantial" is sparse, it would appear that for an interest to be "substantial" in this context, it would require an abnormal insurance investment. Many, if not all Legislators, may carry insurance policies in mutual companies. In addition, insurance companies issue millions of dollars in policies. In order to apply the principles and purpose of the "conflict of interest" statutes, (see 1 M.R.S.A. 1011) and to properly protect the public interest in having Legislators actively represent their constituents, wholesale disqualification of Legislators should be avoided. Thus, in applying the standard of "substantial", the financial interest would have to be unusually significant. However, this point would have to be decided on the facts in each individual case. The number and size of policies held by an individual Legislator would determine if that Legislator's interest was substantial.

Thus, it seems clear that as this bill confers no financial benefit on a mutual insurance company, but merely establishes procedure and standards for demutualization, no "conflict of interest" would arise in a Legislator, who directly or indirectly "owned" a policy, voting on the bill. This result is entirely consistent with the purpose and history of the legislative "conflict of interest" statute.

One final issue remains, that of Legislators who are insurance agents, and who sell mutual insurance company policies. The provisions of 1 M.R.S.A. § 1014, subsection 1, paragraph F establish the conflict of interest provisions for a "professions, trade, business or employment". Again, it would seem clear that this bill does not create any "benefit" to such Legislators. However, even if it could be argued to do so, a Legislator clearly would have no interest "unique and distinct from that of ... persons engaged in similar professions, trades, businesses or employment". (See Attorney General Opinion, September 6, 1984, relating to teacher - Legislators and the "teacher recognition grants.") Thus, it appears clear that this situation presents no "conflict of interest".

Therefore, it appears clear that L.D. 1476 presents no "conflict of interest" for Legislators who own individual or group policies in mutual insurance companies, nor does it create such a "conflict" for insurance brokers who are Legislators.

Sincerely,



Jonathan C. Hull  
Counsel to the Speaker

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